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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

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Steve Livingstone
Project Manager
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P.O. Box 45079
Washington, D.C. 20026-5079

**Re: State of Nevada Scoping Comments - U.S. Department of Energy (DOE)
National Study on Long-Term Stewardship Activities and Issues (Federal
Register Notice Vol. 64. No 193/Wednesday, October 6, 1999/Notices)**

Dear Mr. Livingstone:

The State of Nevada, Division of Environmental Protection, has reviewed the above referenced federal register notice concerning the forthcoming "National Study on Long-Term Stewardship Activities and Issues" for the U.S. Department of Energy's (DOE) nuclear weapons complex. We understand the study is not an Environmental Impact Statement (EIS), however, it will be prepared using the traditional EIS format. Accordingly, our comments focus on various alternative approaches DOE should consider for carrying out long-term stewardship programs and policies across the nuclear weapons complex.

General Comments:

The report should begin by discussing the overall scope of contamination at DOE facilities (e.g., contaminated groundwater, soil, and infrastructure). We believe it is important to communicate the enormous problem at hand, along with emphasizing that DOE weapons complex sites present unique technical challenges because of the presence of radionuclides in soils, groundwater and surface facilities. The report should make it clear that remediation of numerous

sites and the subsequent disposal of “cleanup” wastes will not be completed any time soon. As well, a candid discussion should be provided about past practices as well as future plans to close hundreds of contaminated sites “in place” thus creating long-term stewardship responsibilities for generations to come.

Since cleanup of contaminated sites and management of nuclear materials will require development and/or expansion of DOE facilities,¹ the report should discuss the department’s stewardship responsibilities and alternatives for materials storage facilities and radioactive waste disposal sites. The report should discuss stewardship responsibilities and alternatives for maintaining and monitoring disposal sites containing high-level, TRU, low-level, and mixed low-level wastes. Likewise, the report should address the long-term stewardship alternatives (i.e., path forward) for maintaining and monitoring long-lived materials such as surplus plutonium and highly enriched uranium. The report should disclose long-term stewardship alternatives for these materials, with an eye toward national security and proliferation safeguards.

Programmatic Issues:

Following are several general issues that we believe should be identified and assessed in the referenced report.

- Legislative Authorities:

The report should examine the sufficiency of DOE’s existing legislative authorities for maintaining long-term institutional control over contaminated sites. While certain environmental laws govern “*stewardship*” activities at DOE sites and facilities -- or portions thereof (e.g., CERCLA & RCRA), there is no organic legislative mandate that integrates long-term stewardship responsibilities across the entire Department of Energy complex. In addition, and where specifically required, new legislative authorities should be conceptualized in cases where DOE lacks sufficient long-term jurisdiction for maintaining institutional controls over certain contaminated sites. DOE’s alleged federal ownership of the Nevada Test Site is a case in point.²

- DOE Internal Institutional Arrangements:

The report should assess short and long-term plans governing stewardship responsibilities at the “program level” within DOE. It is well known that disputes exist among DOE’s Environmental Management (EM) program and other headquarter/field office programs over which office should have the responsibility, including financial liability, for certain existing and future obsolete DOE facilities, (e.g., EM or Defense Programs - DP). We do understand that DOE has established a vision for completing cleanup at most weapons complex sites by the year 2006. Nevertheless, the department will be required to address

"legacy" waste streams and contaminated media and infrastructure at ten remaining sites, including five large sites in the foreseeable future. Many of these legacy wastes, contaminated media, and infrastructure are not currently (or planned to be) managed by DOE's EM program. Accordingly, the report should assess alternative "internal" organizational/program strategies that will be needed to maintain active long-term stewardship programs over the near term (i.e., post 2006).

- Financial Security & Shared Responsibilities:

The report should identify alternative approaches to ensure the long-term financial security of organizations charged with stewardship of DOE contaminated sites. Developing alternative financial mechanisms such as federal and state trust funds should be specifically addressed in the report. Financial mechanisms will be needed to support long-term site monitoring, maintenance, and enforcement of institutional controls for the foreseeable future.

Likewise, the report should examine alternatives for sharing certain regulatory responsibilities for long-term stewardship of contaminated sites with other federal, state and local agencies and/or tribal nations. Although we understand the report is not intended to support site-specific stewardship decisions, it nevertheless should conceptually address "programmatic" issues and interests for sharing stewardship responsibilities. Examples include initiatives by states to acquire shared regulatory oversight of DOE disposal facilities, as well as initiatives to obtain financial assurance agreements from DOE to support state oversight of long-term environmental monitoring programs for closed contaminated sites and/or disposal facilities.

- Project "End States," Costs, Schedules & Monitoring: The report should acknowledge that significant uncertainties exist for determining the scope, schedule and cost of major cleanup projects at certain large sites such as those in the states of Idaho, New Mexico, Nevada, South Carolina, Tennessee and Washington. While cleanup and site closure of contaminated sites is being accelerated through the "Path to Closure" planning and budget initiative, significant cost uncertainties remain for contaminated soils, groundwater, and infrastructure at large DOE sites. Because of these uncertainties, the report should acknowledge that sometimes it will not be practical to postulate a specific "end state" for a given cleanup site, nor will it be useful to define specific "baselines" in terms of defining project costs and schedules.

The report should also recognize that because remedial solutions are often focused toward “closure-in-place” at these unique large sites (per existing restricted land-use classifications), there is a greater need for the department to institute long-term stewardship programs at large sites. Appropriately, the referenced study should assess alternative institutional approaches to insure that a long-term commitment is made to environmental monitoring at these sites. Overall, long-term environmental monitoring will be needed to:

- Assess potential deterioration and subsequent release of contamination at nuclear production and testing facilities;
- Track migration of hazards in soils and groundwater; and
- Identify failure of engineered barrier systems.

The report should clearly acknowledge that maintaining a long-term financial commitment to environmental monitoring is essential; since only through monitoring can DOE and its successor agencies insure that information is available to perform periodic risk evaluations.

It should also be acknowledged that without these evaluations it will be impossible for the department to set up early warning systems needed to identify potential detrimental environmental impacts on the human and natural environment. In other words, environmental monitoring will be needed where significant uncertainties exist for identifying migrations/release of contaminants to the biosphere (i.e., groundwater contaminations beneath the NTS, the Hanford site and Oak Ridge). In addition, by maintaining monitoring through enduring stewardship programs, DOE can continue to promote the use of federal facilities for non-defense uses by non-DOE tenants (e.g., at Oak Ridge, Hanford, Idaho and the NTS).

- Accountability & Public Trust:

Given that DOE still does not enjoy a high degree of public trust, it will be important to establish “program accountability” as a key component of a successful long-term stewardship initiative. Establishing program accountability could be accomplished through external oversight of stewardship activities such as site monitoring and enforcement of institutional controls. Following this logic, the report should assess alternatives for sharing and/or delegating to states, tribes and local government certain critical stewardship responsibilities. At present, EPA, along with some states, enforces CERCLA & RCRA authority to insure short-term “stewardship” provisions are carried out

to protect public health and the environment. In Nevada for example, DOE is required to inform state regulators before contaminated facilities and/or sites can be transferred or used for other activities.

In any event, the report should assess the current scope and depth of the regulatory framework governing stewardship activities at DOE sites -- with an eye toward how this framework will, or will not endure over the long-term.

If you have any questions about the issues discussed above, please contact me or John B. Walker at 775 687-4670 ext 3039 or 3027.

Sincerely,

Paul J. Liebendorfer, P.E.
Bureau of Federal Facilities

PJL/JBW

cc: Nevada Congressional Delegation
Allen Biaggi, Nevada Division of Environmental Protection
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¹ Examples of new materials and waste management facilities include plutonium pit conversion facilities, expansion of low-level waste disposal sites, etc.

² To implement a long-term stewardship program at NTS, DOE will need to acquire in perpetuity control of the NTS and yet from the State of Nevada's perspective, this "measure of institutional control" has not been accomplished.

ADDITIONAL BACKGROUND: Unlike other DOE sites, the NTS occupies public lands that were "loaned" to DOE by the Dept. of Interior (DOI) through issuance of several "old" public land orders (See 08/96 NTS Site-Wide EIS). This means the NTS "land withdrawal" was administratively created before enactment of the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA is the guiding federal legislation governing the administration of public lands by DOI's Bureau of Land Management. To address per FLPMA land withdrawals like the NTS, the law requires a review of all administrative land withdrawals made

before 1976 (FLPMA Section 204(1)). The review is intended to determine if existing withdrawals are consistent with the statutory objectives of the programs (in this case nuclear testing) for which the lands were originally withdrawn. It is important to know that the required FLPMA withdrawal review of the NTS was never completed or carried out.

CURRENT SITUATION: Following the 1992 voluntary moratorium on nuclear testing, Nevada's Attorney General sued DOE contesting among other issues federal compliance with FLMPA as well as the requirements of the National Environmental Policy Act (NEPA). In part, the lawsuits argued that DOE made significant "waste disposal" decisions at the NTS without meeting public disclosure requirements under NEPA. As well, the lawsuit argued that NTS was withdrawn for nuclear testing, not as a national/regional disposal site for DOE low-level waste. To address the States concerns DOE prepared a Site-Wide Environmental Impact Statement for the NTS. This action prompted a settlement agreement, which among other issues, now requires DOE to engage in a dialogue with the Department of Interior (DOI) to determine whether DOE can retain exclusive jurisdiction and control over the land at NTS (i.e., compliance with the withdrawal review process specified under FLMPA). To our knowledge and as stipulated in the settlement agreement, the State of Nevada has not been informed as to the outcome of the dialogue between DOE and DOI.